



Reprinted
February 25, 2005

HOUSE BILL No. 1007

DIGEST OF HB 1007 (Updated February 24, 2005 6:37 pm - DI 106)

Citations Affected: IC 4-15; IC 5-11; noncode.

Synopsis: False claims and whistleblower protection. Permits a person to bring a civil action on behalf of the state to recover money owed to the state due to the filing of a false claim. Allows the attorney general to intervene in a civil action concerning a false claim and allows the inspector general to intervene if the attorney general is disqualified from intervening or elects not to intervene. Provides that the person initiating the civil action is entitled to from 10% to 25% of the proceeds recovered in the action if the attorney general or the inspector general intervenes, and from 25% to 30% if the attorney general or inspector general does not intervene. Permits the attorney general and the inspector general to issue a civil investigative demand in an action involving a false claim and establishes procedures for the issuance of civil investigative demands. Provides enhanced relief for a whistleblower who has been retaliated against by an employer for assisting in an investigation concerning a false claim. Makes other changes.

Effective: July 1, 2005.

Bosma, Budak

January 19, 2005, read first time and referred to Committee on Government and Regulatory Reform.
February 8, 2005, reported — Do Pass.
February 24, 2005, read second time, amended, ordered engrossed.

HB 1007—LS 7780/DI 106+



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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1007

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-15-10-4 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) Any employee
3 may report in writing the existence of:

- 4 (1) a violation of a federal law or regulation;
5 (2) a violation of a state law or rule; **or**
6 (3) a violation of an ordinance of a political subdivision (as
7 defined in IC 36-1-2-13); **or**
8 (4) (3) the misuse of public resources;

9 first to a supervisor or appointing authority; unless the supervisor or
10 appointing authority is the person whom the employee believes is
11 committing the violation or misuse of public resources. In that case, the
12 employee may report the violation or misuse of public resources in
13 writing to either the supervisor or appointing authority or to the state
14 ethics commission and any official or agency entitled to receive a
15 report from the state ethics commission under IC 4-2-6-4(b)(2)(G) or
16 IC 4-2-6-4(b)(2)(H). If a good faith effort is not made to correct the
17 problem within a reasonable time, the employee may submit a written

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report of the incident to any person, agency, or organization: to a supervisor or the inspector general.

(b) For having made a report under subsection (a), the employee making the report may not:

- (1) be dismissed from employment;
- (2) have salary increases or employment related benefits withheld;
- (3) be transferred or reassigned;
- (4) be denied a promotion the employee otherwise would have received; or
- (5) be demoted.

(c) Notwithstanding subsections (a) and (b), an employee must make a reasonable attempt to ascertain the correctness of any information to be furnished and may be subject to disciplinary actions for knowingly furnishing false information, including suspension or dismissal, as determined by the employee's appointing authority or the appointing authority's designee. However, any state employee disciplined under this subsection is entitled to process an appeal of the disciplinary action under the procedure as set forth in IC 4-15-2-34 and IC 4-15-2-35.

(d) An employer who **knowingly or intentionally** violates this section commits a Class A ~~infraction~~ **misdemeanor**.

SECTION 2. IC 5-11-5.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 5.5. False Claims and Whistleblower Protection

Sec. 1. The following definitions apply throughout this chapter:

(1) "Claim" means a request or demand for money or property that is made to a contractor, grantee, or other recipient if the state:

(A) provides any part of the money or property that is requested or demanded; or

(B) will reimburse the contractor, grantee, or other recipient for any part of the money or property that is requested or demanded.

(2) "Documentary material" means:

(A) the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, chart, or other document;

(B) a data compilation stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use

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or interpret the data compilations; and

(C) a product of discovery.

(3) "Investigation" means an inquiry conducted by an investigator to ascertain whether a person is or has been engaged in a violation of this chapter.

(4) "Person" includes a natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

(5) "Product of discovery" means the original or duplicate of a:

(A) deposition;

(B) interrogatory;

(C) document;

(D) thing;

(E) result of the inspection of land or other property; or

(F) examination or admission;

that is obtained by any method of discovery in a judicial or an administrative proceeding of an adversarial nature. The term includes a digest, an analysis, a selection, a compilation, a derivation, an index, or another method of accessing an item listed in this subdivision.

(6) "State" means Indiana, any agency of state government, and any political subdivision of the state.

Sec. 2. (a) This section does not apply to a claim, record, or statement concerning income tax (IC 6-3).

(b) A person who knowingly or intentionally:

(1) presents a false claim to the state for payment or approval;

(2) makes or uses a false record or statement to obtain payment or approval of a false claim from the state;

(3) with intent to defraud the state, delivers less money or property to the state than the amount recorded on the certificate or receipt the person receives from the state;

(4) with intent to defraud the state, authorizes issuance of a receipt without knowing that the information on the receipt is true;

(5) receives public property as a pledge of an obligation on a debt from an employee who is not lawfully authorized to sell or pledge the property;

(6) makes or uses a false record or statement to avoid an obligation to pay or transmit property to the state;

(7) conspires with another person to perform an act described in subdivisions (1) through (6); or

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(8) causes or induces another person to perform an act described in subdivisions (1) through (6); is, except as provided in subsection (c), liable to the state for a civil penalty of at least five thousand dollars (\$5,000) and for up to three (3) times the amount of damages sustained by the state. In addition, a person who violates this section is liable to the state for the costs of a civil action brought to recover a penalty or damages.

(c) If the factfinder determines that the person who violated this section:

(1) furnished state officials with all information known to the person about the violation not later than thirty (30) days after the date on which the person obtained the information;

(2) fully cooperated with the investigation of the violation; and

(3) did not have knowledge of the existence of an investigation, criminal prosecution, civil action, or administrative action concerning the violation at the time the person provided information to state officials;

the person is liable for a penalty of not less than two (2) times the amount of damages that the state sustained because of the violation. A person who violates this section is also liable to the state for the costs of a civil action brought to recover a penalty or damages.

Sec. 3. (a) The:

(1) attorney general; and

(2) inspector general;

have concurrent jurisdiction to investigate a violation of section 2 of this chapter.

(b) If the attorney general discovers a violation of section 2 of this chapter, the attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(c) If the inspector general discovers a violation of section 2 of this chapter, the inspector general shall certify this finding to the attorney general. The attorney general may bring a civil action under this chapter against a person who may be liable for the violation.

(d) If the attorney general or the inspector general is served by a person who has filed a civil action under section 4 of this chapter, the attorney general has the authority to intervene in that action as set forth in section 4 of this chapter.

(e) If the attorney general:

(1) is disqualified from investigating a possible violation of

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section 2 of this chapter;

(2) is disqualified from bringing a civil action concerning a possible violation of section 2 of this chapter;

(3) is disqualified from intervening in a civil action brought under section 4 of this chapter concerning a possible violation of section 2 of this chapter;

(4) elects not to bring a civil action concerning a possible violation of section 2 of this chapter; or

(5) elects not to intervene under section 4 of this chapter;

the attorney general shall certify the attorney general's disqualification or election to the inspector general.

(f) If the attorney general has certified the attorney general's disqualification or election not to bring a civil action or intervene in a case under subsection (e), the inspector general has authority to:

(1) bring a civil action concerning a possible violation of section 2 of this chapter; or

(2) intervene in a case under section 4 of this chapter.

(g) The attorney general shall certify to the inspector general the attorney general's disqualification or election under subsection (e) in a timely fashion, and in any event not later than:

(1) sixty (60) days after being served, if the attorney general has been served by a person who has filed a civil action under section 4 of this chapter; or

(2) one hundred eighty (180) days before the expiration of the statute of limitations, if the attorney general has not been served by a person who has filed a civil action under section 4 of this chapter.

(h) A civil action brought under section 4 of this chapter may be filed in:

(1) a circuit or superior court in Marion county; or

(2) a circuit or superior court in the county in which a defendant or plaintiff resides.

(i) The state is not required to file a bond under this chapter.

Sec. 4. (a) A person may bring a civil action for a violation of section 2 of this chapter on behalf of the person and on behalf of the state. The action:

(1) must be brought in the name of the state; and

(2) may be filed in a circuit or superior court in:

(A) the county in which the person resides;

(B) the county in which a defendant resides; or

(C) Marion County.

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(b) Except as provided in section 5 of this chapter, an action brought under this section may be dismissed only if:

(1) the attorney general or the inspector general, if applicable, files a written motion to dismiss explaining why dismissal is appropriate; and

(2) the court issues an order:

(A) granting the motion; and

(B) explaining the court's reasons for granting the motion.

(c) A person who brings an action under this section shall serve:

(1) a copy of the complaint; and

(2) a written disclosure that describes all relevant material evidence and information the person possesses;

on both the attorney general and the inspector general. The person shall file the complaint under seal, and the complaint shall remain under seal for at least one hundred twenty (120) days. The complaint shall not be served on the defendant until the court orders the complaint served on the defendant following the intervention or the election not to intervene of the attorney general or the inspector general. The state may elect to intervene and proceed with the action not later than one hundred twenty (120) days after it receives both the complaint and the written disclosure.

(d) For good cause shown, the attorney general or the inspector general may move the court to extend the time during which the complaint must remain under seal. A motion for extension may be supported by an affidavit or other evidence. The affidavit or other evidence may be submitted in camera.

(e) Before the expiration of the time during which the complaint is sealed, the attorney general or the inspector general may:

(1) intervene in the case and proceed with the action, in which case the attorney general or the inspector general shall conduct the action; or

(2) elect not to proceed with the action, in which case the person who initially filed the complaint may proceed with the action.

(f) The defendant in an action filed under this section is not required to answer the complaint until twenty-one (21) days after the complaint has been unsealed and served on the defendant.

(g) After a person has filed a complaint under this section, no person other than the attorney general or the inspector general may:

(1) intervene; or

(2) bring another action based on the same facts.

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(h) If the person who initially filed the complaint:

(1) planned and initiated the violation of section 2 of this chapter; or

(2) has been convicted of a crime related to the person's violation of section 2 of this chapter;

upon motion of the attorney general or the inspector general, the court shall dismiss the person as a plaintiff.

Sec. 5. (a) If the attorney general or the inspector general intervenes in an action under section 4 of this chapter, the attorney general or the inspector general is responsible for prosecuting the action and is not bound by an act of the person who initially filed the complaint. The attorney general or the inspector general may move for a change of venue to Marion County if the attorney general or the inspector general files a motion for change of venue not later than ten (10) days after the attorney general or the inspector general intervenes. Except as provided in this section, the person who initially filed the complaint may continue as a party to the action.

(b) The attorney general or the inspector general may dismiss the action after:

(1) notifying the person who initially filed the complaint; and

(2) the court has conducted a hearing at which the person who initially filed the complaint was provided the opportunity to be heard on the motion.

(c) The attorney general or the inspector general may settle the action if a court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable in light of the circumstances. Upon a showing of good cause, the court may:

(1) conduct the settlement hearing in camera; or

(2) lift all or part of the seal to facilitate the investigative process or settlement.

The court may consider an objection to the settlement brought by the person who initially filed the complaint, but is not bound by this objection.

(d) Upon a showing by the attorney general, the inspector general, or the defendant that unrestricted participation by the person who initially filed the complaint:

(1) will interfere with the prosecution of the case by the attorney general or the inspector general; or

(2) will involve the presentation of repetitious or irrelevant evidence, or evidence introduced for purposes of harassment;

the court may impose reasonable limitations on the person's

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1 participation, including a limit on the number of witnesses that the
 2 person may call, a limit to the amount and type of evidence that the
 3 person may introduce, a limit to the length of testimony that the
 4 person's witness may present, and a limit to the person's
 5 cross-examination of a witness.

6 (e) If the attorney general or the inspector general elects not to
 7 intervene in the action, the person who initially filed the complaint
 8 has the right to prosecute the action. Upon request, the attorney
 9 general or the inspector general shall be served with copies of all
 10 documents filed in the action and may obtain a copy of depositions
 11 and other transcripts at the state's expense.

12 (f) If the attorney general and the inspector general have elected
 13 not to intervene in an action in accordance with section 4 of this
 14 chapter, upon a showing of good cause, a court may permit either
 15 the attorney general or the inspector general to intervene at a later
 16 time. The attorney general may move to intervene at any time. If
 17 the attorney general has not moved to intervene, the inspector
 18 general may move to intervene by providing written notice to the
 19 attorney general of the inspector general's intent to intervene. If
 20 the attorney general does not move to intervene earlier than fifteen
 21 (15) days after receipt of the notice of intent to intervene, the
 22 inspector general may move to intervene. If the attorney general or
 23 the inspector general intervenes under this subsection, the attorney
 24 general or the inspector general is responsible for prosecuting the
 25 action as if the attorney general or the inspector general had
 26 intervened in accordance with section 4 of this chapter.

27 (g) If the attorney general or inspector general shows that a
 28 specific discovery action by the person who initially filed the
 29 complaint will interfere with the investigation or prosecution of a
 30 civil or criminal matter arising out of the same facts, the court
 31 may, following a hearing in camera, stay discovery for not more
 32 than sixty (60) days. After the court has granted a sixty (60) day
 33 stay, the court may extend the stay, following a hearing in camera,
 34 if it determines that the state has pursued the civil or criminal
 35 investigation with reasonable diligence and that a specific
 36 discovery action by the person who initially filed the complaint will
 37 interfere with the state's investigation or prosecution of the civil or
 38 criminal matter.

39 (h) A court may dismiss an action brought under this chapter to
 40 permit the attorney general or the inspector general to pursue its
 41 claim through an alternative proceeding, including an
 42 administrative proceeding or a proceeding brought in another

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jurisdiction. The person who initially filed the complaint has the same rights in the alternative proceedings as the person would have had in the original proceedings. A finding of fact or conclusion of law made in the alternative proceeding is binding on all parties to an action under this section once the determination made in the alternative proceeding is final under the rules, regulations, statutes, or law governing the alternative proceeding, or if the time for seeking an appeal or review of the determination made in the alternative proceeding has elapsed.

Sec. 6. (a) The person who initially filed the complaint is entitled to the following amounts if the state prevails in the action:

(1) Except as provided in subdivision (2), if the attorney general or the inspector general intervened in the action, the person is entitled to receive at least fifteen percent (15%) and not more than twenty-five percent (25%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(2) If the attorney general or the inspector general intervened in the action and the court finds that the evidence used to prosecute the action consisted primarily of specific information contained in:

(A) a transcript of a criminal, civil, or administrative hearing;

(B) a legislative, an administrative, or another public report, hearing, audit, or investigation; or

(C) a news media report;

the person is entitled to receive not more than ten percent (10%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(3) If the attorney general or the inspector general did not intervene in the action, the person is entitled to receive at least twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement, plus reasonable attorney's fees and an amount to cover the expenses and costs of bringing the action.

(4) If the person who initially filed the complaint:

(A) planned and initiated the violation of section 2 of this chapter; or

(B) has been convicted of a crime related to the person's violation of section 2 of this chapter;

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the person is not entitled to an amount under this section.

After conducting a hearing at which the attorney general or the inspector general and the person who initially filed the complaint may be heard, the court shall determine the specific amount to be awarded under this section to the person who initially filed the complaint. The award of reasonable attorney's fees plus an amount to cover the expenses and costs of bringing the action is an additional cost assessed against the defendant and may not be paid from the proceeds of the civil action.

(b) If:

(1) the attorney general or the inspector general did not intervene in the action; and

(2) the defendant prevails;

the court may award the defendant reasonable attorney's fees plus an amount to cover the expenses and costs of defending the action, if the court finds that the action is frivolous.

(c) The state is not liable for the expenses, costs, or attorney's fees of a party to an action brought under this chapter.

Sec. 7. (a) This section does not apply to an action brought by:

(1) the attorney general;

(2) the inspector general;

(3) a prosecuting attorney; or

(4) a state employee in the employee's official capacity.

(b) A court does not have jurisdiction over an action brought under section 4 of this chapter that is based on information discovered by a present or former state employee in the course of the employee's employment, unless:

(1) the employee, acting in good faith, has exhausted existing internal procedures for reporting and recovering the amount owed the state; and

(2) the state has failed to act on the information reported by the employee within a reasonable amount of time.

(c) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is brought by an incarcerated offender, including an offender incarcerated in another jurisdiction.

(d) A court does not have jurisdiction over an action brought under section 4 of this chapter against the state, a state officer, a judge (as defined in IC 33-23-11-7), a justice, a member of the general assembly, a state employee, or an employee of a political subdivision, if the action is based in information known to the state at the time the action was brought.

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(e) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon an act that is the subject of a civil suit, a criminal prosecution, or an administrative proceeding in which the state is a party.

(f) A court does not have jurisdiction over an action brought under section 4 of this chapter if the action is based upon information contained in:

- (1) a transcript of a criminal, civil, or administrative hearing;
- (2) a legislative, an administrative, or another public report, hearing, audit, or investigation; or
- (3) a news media report;

unless the person bringing the action has direct and independent knowledge of the information that is the basis of the action, and the person bringing the action has voluntarily provided this information to the state.

Sec. 8. (a) An employee who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in the terms and conditions of employment by the employee's employer because the employee:

- (1) objected to an act or omission described in section 2 of this chapter; or
 - (2) initiated, testified, assisted, or participated in an investigation, action, or hearing under this chapter;
- is entitled to all relief necessary to make the employee whole.

(b) Relief under this section may include:

- (1) reinstatement with the same seniority status the employee would have had but for the act described in subsection (a);
- (2) two (2) times the amount of back pay owed the employee;
- (3) interest on the back pay owed the employee; and
- (4) compensation for any special damages sustained as a result of the act described in subsection (a), including costs and expenses of litigation and reasonable attorney's fees.

(c) An employee may bring an action for the relief provided in this section in any court with jurisdiction.

Sec. 9. (a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under this chapter may be served at any place in the state.

(b) A civil action under section 4 of this chapter is barred unless it is commenced:

- (1) not later than six (6) years after the date on which the violation is committed; or
- (2) not later than three (3) years after the date when facts

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material to the cause of action are discovered or reasonably should have been discovered by a state officer or employee who is responsible for addressing the false claim. However, an action is barred unless it is commenced not later than ten (10) years after the date on which the violation is committed.

(c) In a civil action brought under this chapter, the state is required to establish:

- (1) the essential elements of the offense; and
- (2) damages;

by a preponderance of the evidence.

(d) If a defendant has been convicted (including a plea of guilty or nolo contendere) of a crime involving fraud or a false statement, the defendant is estopped from denying the elements of the offense in a civil action brought under section 4 of this chapter that involves the same transaction as the criminal prosecution.

Sec. 10. (a) If the attorney general or the inspector general has reason to believe that a person may be in possession, custody, or control of documentary material or information relevant to an investigation involving a false claim, the attorney general or the inspector general may, before commencing a civil proceeding under this chapter, issue and serve a civil investigative demand requiring the person to do one (1) or more of the following:

- (1) Produce the documentary material for inspection and copying.
- (2) Answer an interrogatory in writing concerning the documentary material or information.
- (3) Give oral testimony concerning the documentary material or information.

(b) If a civil investigative demand is a specific demand for a product of discovery, the official issuing the civil investigative demand shall:

- (1) serve a copy of the civil investigative demand on the person from whom the discovery was obtained; and
- (2) notify the person to whom the civil investigative demand is issued of the date of service.

Sec. 11. (a) A civil investigative demand issued under this chapter must describe the conduct constituting a violation involving a false claim that is under investigation and the statute or rule that has been violated.

(b) If a civil investigative demand is for the production of documentary material, the civil investigative demand must:

- (1) describe each class of documentary material to be

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1 produced with sufficient specificity to permit the material to
2 be fairly identified;

3 (2) prescribe a return date for each class of documentary
4 material that provides a reasonable period of time to assemble
5 and make the material available for inspection and copying;
6 and

7 (3) identify the official to whom the material must be made
8 available.

9 (c) If a civil investigative demand is for answers to written
10 interrogatories, the civil investigative demand must:

11 (1) set forth with specificity the written interrogatories to be
12 answered;

13 (2) prescribe the date by which answers to the written
14 interrogatories must be submitted; and

15 (3) identify the official to whom the answers must be
16 submitted.

17 (d) If a civil investigative demand requires oral testimony, the
18 civil investigative demand must:

19 (1) prescribe a date, time, and place at which oral testimony
20 will be given;

21 (2) identify the official who will conduct the examination and
22 the custodian to whom the transcript of the examination will
23 be submitted;

24 (3) specifically state that attendance and testimony are
25 necessary to the conduct of the investigation;

26 (4) notify the person receiving the demand that the person has
27 the right to be accompanied by an attorney and any other
28 representative; and

29 (5) describe the general purpose for which the demand is
30 being issued and the general nature of the testimony,
31 including the primary areas of inquiry.

32 (e) A civil investigative demand that is a specific demand for a
33 product of discovery may not be returned until at least twenty-one
34 (21) days after a copy of the civil investigative demand has been
35 served on the person from whom the discovery was obtained.

36 (f) The date prescribed for the giving of oral testimony under a
37 civil investigative demand issued under this chapter must be a date
38 that is not less than seven (7) days after the date on which the
39 demand is received, unless the official issuing the demand
40 determines that exceptional circumstances are present that require
41 an earlier date.

42 (g) The official who issues a civil investigative demand may not

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1 issue more than one (1) civil investigative demand for oral
2 testimony by the same person, unless:

- 3 (1) the person requests otherwise; or
- 4 (2) the official who issues a civil investigative demand, after
5 conducting an investigation, notifies the person in writing that
6 an additional civil investigative demand for oral testimony is
7 necessary.

8 Sec. 12. (a) A civil investigative demand issued under this
9 chapter may not require the production of any documentary
10 material, the submission of any answers to written interrogatories,
11 or the giving of any oral testimony if the material, answers, or
12 testimony would be protected from disclosure under the standards
13 applicable:

- 14 (1) to a subpoena or subpoena duces tecum issued by a court
15 to aid in a grand jury investigation; or
- 16 (2) to a discovery request under the rules of trial procedure;
17 to the extent that the application of these standards to a civil
18 investigative demand is consistent with the purposes of this
19 chapter.

20 (b) A civil investigative demand that is a specific demand for a
21 product of discovery supersedes any contrary order, rule, or
22 statutory provision, other than this section, that prevents or
23 restricts disclosure of the product of discovery. Disclosure of a
24 product of discovery under a specific demand does not constitute
25 a waiver of a right or privilege that the person making the
26 disclosure may be otherwise entitled to invoke to object to
27 discovery of trial preparation materials.

28 Sec. 13. (a) A civil investigative demand issued under this
29 chapter may be served by an investigator or by any other person
30 authorized to serve process.

31 (b) A civil investigative demand shall be served in accordance
32 with the rules of trial procedure. A court having jurisdiction over
33 a person not located in the state has the same authority to enforce
34 compliance with this chapter as the court has over a person located
35 in the state.

36 Sec. 14. (a) The production of documentary material in response
37 to a civil investigative demand served under this chapter shall be
38 made in accordance with Trial Rule 34.

39 (b) Each interrogatory in a civil investigative demand served
40 under this chapter shall be answered in accordance with Trial Rule
41 33.

42 (c) The examination of a person under a civil investigative

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1 demand for oral testimony served under this chapter shall be
2 conducted in accordance with Trial Rule 30.

3 Sec. 15. (a) The official who issued the civil investigative demand
4 is the custodian of the documentary material, answers to
5 interrogatories, and transcripts of oral testimony received under
6 this chapter.

7 (b) An investigator who receives documentary material, answers
8 to interrogatories, or transcripts of oral testimony under this
9 section shall transmit them to the official who issued the civil
10 investigative demand. The official shall take physical possession of
11 the material, answers, or transcripts and is responsible for the use
12 made of them and for the return of documentary material.

13 (c) The official who issued the civil investigative demand may
14 make copies of documentary material, answers to interrogatories,
15 or transcripts of oral testimony as required for official use by the
16 attorney general, the inspector general, or the state police. The
17 material, answers, or transcripts may be used in connection with
18 the taking of oral testimony under this chapter.

19 (d) Except as provided in subsection (e), documentary material,
20 answers to interrogatories, or transcripts of oral testimony, while
21 in the possession of the official who issued the civil investigative
22 demand, may not be made available for examination to any person
23 other than:

24 (1) the attorney general or designated personnel of the
25 attorney general's office;

26 (2) the inspector general or designated personnel of the
27 inspector general's office; or

28 (3) an officer of the state police who has been authorized by
29 the official who issued the civil investigative demand.

30 (e) The restricted availability of documentary material, answers
31 to interrogatories, or transcripts of oral testimony does not apply:

32 (1) if the person who provided:

33 (A) the documentary material, answers to interrogatories,
34 or oral testimony; or

35 (B) a product of discovery that includes documentary
36 material, answers to interrogatories, or oral testimony;

37 consents to disclosure;

38 (2) to the general assembly or a committee or subcommittee
39 of the general assembly; or

40 (3) to a state agency that requires the information to carry out
41 its statutory responsibility.

42 Documentary material, answers to interrogatories, or transcripts

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of oral testimony requested by a state agency may be disclosed only under a court order finding that the state agency has a substantial need for the use of the information in carrying out its statutory responsibility.

(f) While in the possession of the official who issued the civil investigative demand, documentary material, answers to interrogatories, or transcripts of oral testimony shall be made available to the person, or to the representative of the person who produced the material, answered the interrogatories, or gave oral testimony. The official who issued the civil investigative demand may impose reasonable conditions upon the examination of use of the documentary material, answers to interrogatories, or transcripts of oral testimony.

(g) The official who issued the civil investigative demand and any attorney employed in the same office as the official who issued the civil investigative demand may use the documentary material, answers to interrogatories, or transcripts of oral testimony in connection with a proceeding before a grand jury, court, or agency. Upon the completion of the proceeding, the attorney shall return to the official who issued the civil investigative demand any documentary material, answers to interrogatories, or transcripts of oral testimony that are not under the control of the grand jury, court, or agency.

(h) Upon written request of a person who produced documentary material in response to a civil investigative demand, the official who issued the civil investigative demand shall return any documentary material in the official's possession to the person who produced documentary material, if:

- (1) a proceeding before a grand jury, court, or agency involving the documentary material has been completed; or
- (2) a proceeding before a grand jury, court, or agency involving the documentary material has not been commenced within a reasonable time after the completion of the investigation.

The official who issued the civil investigative demand is not required to return documentary material that is in the custody of a grand jury, court, or agency.

Sec. 16. (a) A person who has failed to comply with a civil investigative demand is subject to sanctions under Trial Rule 37 to the same extent as a person who has failed to cooperate in discovery.

(b) A person who objects to a civil investigative demand issued

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1 under this chapter may seek a protective order in accordance with
2 Trial Rule 26(C).

3 Sec. 17. Documentary material, answers to written
4 interrogatories, or oral testimony provided in response to a civil
5 investigative demand issued under this chapter are confidential.

6 Sec. 18. Proceedings under this chapter are governed by the
7 Indiana Rules of Trial Procedure, unless the Indiana Rules of Trial
8 Procedure are inconsistent with this chapter.

9 SECTION 3. [EFFECTIVE JULY 1, 2005] IC 4-15-10-4, as
10 amended by this act, applies only to crimes committed after June
11 30, 2005.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1007, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BUCK, Chair

Committee Vote: yeas 11, nays 1.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1007 be amended to read as follows:

Page 1, line 5, after "rule;" insert "**or**".

Page 1, strike lines 6 through 7.

Page 1, line 8, strike "(4)" and insert "**(3)**".

(Reference is to HB 1007 as printed February 9, 2005.)

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